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SUBJECT: Rule of Law Round-Up December 2009

REF: 08 SDO 1608, SDO 315, SDO 1257, 08 SDO 1296, SDO 1164, SDO 817,
SDO 308

11. (U) The latest key developments in the rule of law / law
enforcement field include:

-- Constitutional Reforms approved by Congress, set for
promulgation on 01/26/10;

-- The Central Electoral Board's procurement practices are
questioned;

-- Government agencies and political parties are found wanting on
transparency requirements;

-- The Public Ministry continues to advance on professionalization
and stands its ground in two high-profile cases involving
extrajudicial killings by police and military elements;

-- Poll indicates public perceives corruption worsening;

-- Judge approves bail for major money laundering suspect, who
promptly disappears; and

-- Manufacturers of adulterated drugs quickly resume their trade
following bust.

Constitutional Reforms

¶2. (U) After over a year of debate and work (Reftels A, B), what is, in effect, a new constitution was approved by the Congressional "Revisory Assembly" on November 16, although technical edits are still being made and a final version has yet to be published. The new constitution is expected to be issued, in a ceremony headed by President Fernandez on January 26. The new constitution contains 277 articles, whereas the current constitution has 120. Once the new constitution is promulgated, many laws will require revision to comply with its new provisions. The main innovations include unlimited, albeit non-consecutive, presidential terms, creation of a constitutional court, and what is widely interpreted as a total ban on abortion. Also, persons elected to Congress in May 2010 will serve six years not the current four, so as to synchronize legislative, municipal and presidential elections, starting in ¶2016. The President will retain a dominant role, among the nominally co-equal branches of government, although Congressional oversight powers have been slightly enhanced. Post will report more fully on the new constitution once a final version is published.

Central Electoral Board's Procurement Under the Spotlight

¶3. (U) The Camara de Cuentas - which performs audits of other government institutions - reported that the Administrative Chamber of the Central Electoral Board (JCE), the independent Government agency responsible for citizen registration and supervising elections, mishandled or lost some USD 22 million through "illegal" or "untrustworthy" procurements and/or embezzlement. However, Roberto Rosario Martinez, the head of the Administrative Chamber of the JCE, said the Camara was just out to ruin his institution's image.

Transparency Wanting

¶4. (U) A major Dominican NGO, Participacion Ciudadana, released an October 2009 study assessing government compliance with law 200-04, the DR's FOIA (Freedom of Information Act) equivalent. The report found that many key national and municipal government bodies are not complying with the law's requirements: Of 80 institutions with websites, 40 percent offered incomplete information and 10 percent none at all, 64 percent of these entities failed to publish fully their budgets and expenses, and of 85 institutions that were asked to provide information, only 45 percent responded fully and on-time, while 40 percent did not answer at all and 14 percent gave incomplete responses. Some 80 percent of municipal governments did not even have an office for handling inquiries. Meanwhile, media reports indicate that none of the country's 23 parties comply with Law 200-04, when it comes to reporting their finances and expenditures.

Public Ministry Strengthened

¶5. (U) In October, Yeni Berenice Reynoso was appointed as the first female prosecutor to head the district of Santiago (the DR's second-largest city). This was followed by the selection of another woman to be chief prosecutor in the city of La Vega. Both are 27 years of age, making them among the youngest prosecutors ever. These women are career prosecutors; their promotions show that the DR is beginning to fill higher positions with professionals, rather than political appointees. Currently, there are 778 prosecutors in the country, of whom 668 are career

prosecutors.

¶6. (U) The Public Ministry issued a report on the death of two suspected kidnappers in the high-profile Baldera kidnapping case, concluding that the police officers involved had executed the two and terming as "lies" the official police report on the incident, which claimed that the suspects were killed in an "exchange of gunfire" (Ref C). The investigating judge disregarded a request from National Police Chief General Rafael Guzman Fermin to release the policemen under his supervision and ordered them imprisoned for three months preventive detention. Secretary of the Interior Franklin Almeyda publicly defended the police report, although he soon let the matter drop.

¶7. (SBU) Prosecution of the original 25 suspects in the 2008 "Paya massacre" case, in which six Colombian and one Dominican suspected narcotraffickers were murdered (Ref D) came to life in late September as the case was beginning its formal opening in the San Cristobal Province Criminal Court. The defendants disrupted the hearing, shouting insults and threats at the judge and prosecutors. Given the violent nature of the case and the threats, as well as the presence among the defendants of some ex-military

officials, high-level GoDR officials then demanded that the case be transferred to the capital, in the interests of justice and security. The Supreme Court agreed (Ref E) and on 10/27/09 the case re-opened, this time in a court of first instance in the National District of Santo Domingo. The judge approved of a prosecution motion to add three individuals to the list of those accused in order to show a nexus between the murders and narcotics trafficking (the three were arrested while in possession of some eight kilos of cocaine thought to be part of a 1200 kilo shipment that allegedly inspired the killings).

Public Perception of Corruption

¶8. (U) Although the judicial system seems to be making some progress, public opinion is not sanguine about its performance when it comes to public security and corruption. The center-left newspaper "Hoy" commissioned a recently released Gallup poll, which found that about 64 percent of Dominicans think that corruption is worse now than under Hipolito Mejia, whose 2000-2004 presidency was dominated by a financial crisis sparked by massive bank fraud. (Note: A 2008 Gallup poll showed 82 percent of Dominicans consider the country corrupt, while 28 percent saw corruption as an obstacle to development. End Note) The Gallup-Hoy study also found that while 45 percent of Dominicans feel secure, 42 percent fear for their families, and 45 percent of adults feel their property is not adequately protected. In the 2009-2010 Global Competitiveness Index, the Dominican Republic ranks close to the bottom (120 of 133) as regards "Business Costs of Crime and Violence."

Money Launderer Jumps Bail

¶9. (SBU) Sobeida Felix Morel - suspected of laundering millions of dollars in narcotics proceeds for her lover, fugitive narcotrafficker Jose Figueroa Agosto - unsurprisingly disappeared following her release on bail by Judge Rosanna Vasquez (who promptly went off on an overseas vacation). President of the Supreme Court Jorge Subero Isa defended the judge's action, however, noting that her application of the Criminal Procedure Code was within bounds and claiming that the country's already

overcrowded jails would overflow if all defendants connected to narcotrafficking were denied bail. (COMMENT: Felix Morel clearly was a major flight risk - her lover is an escapee from a prison in Puerto Rico. END COMMENT.)

¶10. (U) With respect to the case involving the murder of imprisoned drug king-pin Florian Feliz (Ref F), a judge ordered the "preventive detention" of the two guards accused of having killed him. Nevertheless, the two officers, Captain Lino de Oca Jimenez and Lt. Col. Jose Francisco Pulinario Rodriguez, were subsequently released to the National Police, which is responsible for ensuring that they report the 15th and 30th of each month to authorities. Despite the scandal that ensued following reports on the lifestyle Florian Feliz lived while running his drug trafficking operations in jail -- enjoying his own kitchen, television and visits by prostitutes (Ref F) -- top prison officials were not subject to disciplinary action. . (COMMENT: The ability Florian Feliz had to run his business from jail does not appear to be unique: There are many reports of wealthy prisoners having access to cell phones and other benefits in certain Dominican jails, although this is reportedly not the case in less crowded, better run model prisons that the Attorney General promotes. END COMMENT.)

Adulterated Drugs On Sale Again

¶11. (U) There have been no reported prosecutions resulting from the raids in Moca on pharmacies selling adulterated or expired drugs earlier this year (Ref G). According to an investigative piece by media outlet "Clave Digital," many of these shops have reopened. The Dominican Association of Pharmaceutical Industries (INFADOMI) believes that some 800 million to 1 billion Dominican pesos' worth (USD 23 - 26 million) of illegal medicines are sold in the country each year, comprising approximately 10 to 12 percent of all pharmaceuticals sold in the DR.

Lambert